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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,739	09/22/2003	Jennifer Mary Marsh	CM2633MC	1896

27752 7590 03/01/2006

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,739	<b>Applicant(s)</b> MARSH ET AL.	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-7 and 9-14 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1        This action is responsive to the amendment filed on January 12, 2006.

2        The rejection of claims 1-4, 6-7 and 9-14 under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US 6,004,355), is maintained for the reasons set forth in the previous office action mailed on July 12,2005.

3        The rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US 6,004,355) in view of Reese et al. (US 4,138,478), is maintained for the reasons set forth in the previous office action mailed on July 12,2005.

### ***Response to Applicant's Arguments***

4        Applicant's arguments filed 1/12/2006 have been fully considered but they are not persuasive.

With respect to the rejections of the claims under 35 U.S.C, 103(a) based on Dais et al. (US' 355), Applicant argues that the Examiner has failed to establish a prima facie case of obviousness because the level of the chelant in a composition suitable for bleaching or dyeing hair is not recognized in the prior art as being a result-effective variable. With respect to preventing damage to the hair during oxidative treatments, and, in turn increasing the deposition of conditioning agents on the hair. Applicant also argues that the deposition test at page 20, line 13 of the specification demonstrates superior and unexpected results when the claimed composition comprises 5% of EDDS over the prior art composition that comprises 1.2% ethylenediamine-N-N-disuccinic acid (EDDS).

The examiner respectfully disagrees with the above argument because Dias et al. (US' 355) teaches a composition comprising the sequestrant (chelant) agents and wherein the chelants

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are presented in the amounts of 0.05 to 10%, which covered the claimed range as, claimed (see col. 23, line 65 and col. 24, lines 19-23). Therefore, there is a sufficient motivation to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the amount of the chelant agent in the composition in order to get the maximum effective amounts of these dyeing ingredients.

With respect to the argument based on the deposition test in the specification on page 20, The examiner's position is that the comparative data is not commensurate in the scope with the claims because the "objective evidence of nonobviousness must be commensurate in the scope with the claims which the evidence is offered to support," In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). See also *In re Gransselli*, 713 F.2d 731, 741, 218 USPQ 769, 777 (F3d. Cir. 1983) (Claims were directed to certain catalysts containing an alkali metal. Evidence presented to rebut an obviousness rejection compared catalysts containing sodium with the prior art. The court held this evidence insufficient to rebut the prima facie case because experiments limited to sodium were not commensurate in the scope with the claims.).

In this case the comparative data in the deposition test recite specific ingredients of PEG2-soyamine as an alkoxylated amine and ethylenediamine-N-N-disuccinic acid (EDDS) as a chelant, while the claims recite an alkoxylate amine and a chelant and not specific alkoxylate amine or specific chelant and thus, the experiments limited to specific conditioning agent and specific chelant were not commensurate in the scope with the claims. Further, the composition of the prior art teaches and exemplify ethylenediamine tetraacetic acid (EDTA) as a chelant and not

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(EDDS) that used in the comparative data. Therefore, the comparative data is not commensurate in the scope with the claims limitations.

With respect to the rejection of claim 5 under 35 U.S.C. 103(a) over Dias et al. (US' 355) in view of Reese et al. (US' 478), Applicant argues that there is no motivation to combine the references because none of the references teaches or discloses the claims limitations.

The examiner respectfully disagrees with the above argument for the same reasons mentioned above.

5      **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

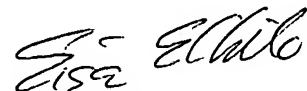
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

February 22, 2006